

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking for the Purpose of Amending
General Order 156.

Rulemaking 03-02-035
(Filed February 27, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON MOTIONS FOR PROTECTIVE ORDERS**

Motions for Protective Orders

This rulemaking required all respondents to file a report as directed in the rulemaking.¹ Some of the respondent utilities filing reports also filed motions for protective orders, requesting that certain information be kept under seal. This ruling addresses those motions.

1. Overview

Rulemaking 03-02-035 required respondents to include the following information in their reports:

- Each “excluded category”² the utility has invoked in its annual WMDVBE reports to the Commission since the initiation of General Order (GO) 156 through the year 2002;

¹ The original due date for the report was May 15, 2003, and this date was extended until May 30 by Administrative Law Judge (ALJ) ruling for several of the respondents.

² GO 156 permits the utilities to create an “excluded category” of products or services in defined circumstances.

- The dollars and percentage of dollars attributable to a utility's exclusions each year since the initiation of GO 156;
- Identify by verification order number (VON) each vendor that received payment for contract service for the reporting year 2002;
- Identify the company name, a brief description of service provided, and the dollar amount paid to the vendor for the reporting year 2002;
- Report the same information for fuel purchases if reported separately under GO 156, § 9.1.10;
- Explain the basis for any discrepancies in the total dollar amounts reported in the utility's annual report vs. this request.

Most of the utilities filing a report deem some of the above information confidential. However, the utilities are not consistent on what information they believe is confidential. Some believe that the vendor name, VON, and all dollar amounts spent on the contracts should be protected, while others are more circumscribed in their confidentiality claims. The general basis for these claims is that some of the vendors believe that vendor specific information (including the vendors' names, VON, services provided by, and amounts paid to the utility's vendors) is proprietary to them, and disclosure could place these vendors at a competitive disadvantage. Some utilities also believe the information is proprietary because competitors could potentially discern when, how, and at what cost the utility intends to deploy its services.

Greenlining Institute and Latino Issues Forum oppose the motions, arguing that the utilities have not provided sufficient evidence to suggest that their vendors feel the information is proprietary and the utilities' concern for their own privacy is unsubstantiated.

Disclosure of a particular vendor's name (and VON number) together with the amount paid to a particular vendor for a particular service could place the vendors at a competitive disadvantage and could also disadvantage the utility in future dealings with these vendors. However, the utilities have not adequately demonstrated how public disclosure of the categories of services provided by these vendors and the amounts paid for the services (provided the vendor name and VON numbers are redacted) will disadvantage the vendors or the utility. Therefore, as a general principal, the utility may keep under seal as set forth below the vendor names and VON numbers but should disclose the rest of the information. However, because each utility's report and motion is different, and utilities have already disclosed and redacted different information, I rule on each motion separately, in order to achieve an outcome consistent with this general principal.

I also require the utilities to make the unredacted versions of their reports available immediately to parties in this proceeding who request them, upon execution of an appropriate nondisclosure agreement.

2. Individual Motions

A. Allegiance Telecom of California (Allegiance)

In its report, Allegiance discloses the vendors' names and a brief description of the services provided, but seeks to redact the dollar amount paid for the services. Because Allegiance has already disclosed the vendors' names, it is problematical to also disclose the individual amounts associated with each vendor. Therefore, I grant Allegiance's motion to redact the dollar amounts paid as set forth in Attachment B to its report. However, Allegiance shall file and serve a modified redacted report disclosing the total dollar amounts paid for the services listed in Attachment B as set forth below.

B. AT&T Communications of California

I grant AT&T Communications' revised motion to place the vendors' names and VON numbers under seal. AT&T Communication shall file and serve a modified redacted report disclosing the payments made in the last column of Exhibit A, as set forth below.

C. AT&T Wireless Services of California

AT&T Wireless Services filed an amended motion on July 10, 2003 after the prehearing conference and seeks to keep much of its report under seal. In addition to vendor specific information and accounting codes, AT&T Wireless services also seeks to keep confidential very general information on its use of excluded categories, arguing that any information regarding the utility's procurement activities could provide its competitors with an unfair competitive advantage. The redacted version of the report contains the types of services provided by certain WMDVBE vendors and amounts paid to those vendors. However, the utility seeks to keep confidential a general discussion on its WMDVBE reporting and procurement, as well as the excluded category dollars and what percentage this is of the total amount spent, without providing sufficient justification for sealing such information.³

I, therefore, grant AT&T Wireless Services' motion to place under seal the following portions of its report: Page 3: the indented information on the chart under the column entitled "Exclusions Code," Page 5: the information in the chart under the columns entitled "Supplier Name" and "Clearing House Verified -VON"; and the information in the "MWBE Classification" columns in

³ Other telephone utilities, such as Pacific Bell, have disclosed the total amount spent and the percentage attributable to WMDVBE spending.

Attachments A through G. AT&T Wireless Services shall file and serve a modified redacted report as set forth below.

D. Cingular Wireless

Cingular Wireless has never filed a GO 156 report with the Commission and has provided many detailed pages documenting its spending in California. Unfortunately, the vendors' names and VON numbers appear in much of this information, and general listings of categories of spending are lacking. I therefore grant Cingular Wireless' motion to keep under seal the following: Exhibit A (except for the total spend numbers in Exhibit A (1)(2)(3) and (4)); Exhibit C, and the vendor number and vendor names in Exhibit D. The following parts of the report shall be disclosed: Exhibit A, total spend numbers in sections (1)(2)(3) and (4); Exhibit B; and the YTD and Diversity information in Exhibit D. Cingular Wireless shall file and serve a modified redacted report as set forth below.

E. Comcast Phone of California

I grant Comcast's motion to redact the VON numbers and company names in Attachment A. However, Comcast shall file and serve a modified redacted report with the dollar amounts paid in 2002 disclosed as set forth below.

F. Pacific Bell Telephone Company (SBC California) (Pacific)

I grant Pacific's motion, as clarified in its modified redacted report sent to me after the prehearing conference, to redact the VON numbers and vendors' names from Attachment 1 of its report and to redact the vendors' names from Attachment 2. Pacific shall file and serve a copy of its modified redacted report as set forth below.

G. Pacific Gas and Electric Company (PG&E)

PG&E moves to redact the vendors' names and VON numbers from its report, and I grant this motion as set forth below.

H. San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas)

SDG&E and SoCalGas move to redact the vendors' names and VON numbers from its report, and I grant this motion as set forth below.

I. SBC Advanced Solutions, Inc.

SBC Advanced Solutions' amended June 30 motion seeks to redact the vendors' names and VON numbers from its report, and I grant this motion as set forth below. SBC Advanced Solutions, Inc. shall file and serve a modified redacted report as set forth below.

J. Southern California Edison Company (Edison)

I grant Edison's motion to keep the vendors' names and VON numbers under seal. However, Edison shall file and serve a modified redacted report disclosing the dollar amounts paid as set forth below.

K. Southwest Gas Corporation (Southwest)

I grant Southwest's motion to keep the vendors' names and VON numbers in Attachment B of its report under seal. However, Southwest shall file and serve a modified redacted report disclosing both the services provided and amounts paid in Attachment B, as set forth below.

L. Verizon California Inc. (Verizon)

I grant Verizon's motion to keep confidential the vendors' names and VON numbers in Exhibit 2, and the vendor-specific information of Exhibit 3 Verizon has designated as confidential (the listing of vendors numbered 1-8).

However, Verizon shall file and serve a modified redacted report disclosing the both the services provided and amounts paid in Exhibit 2, as set forth below.

M. WorldCom, Inc. (WorldCom)

In its modified version of Attachment 2 of its report, WorldCom seeks to keep confidential the vendors' names and VON numbers. WorldCom's motion is granted. WorldCom shall file and serve the July 3, 2003 modified version of Attachment 2 of its report as set forth below.

N. XO California, Inc. (XO)

XO seeks confidential treatment of the amounts paid to its vendors. XO has already disclosed the vendors' names, VON numbers and a brief description of the services provided. Given the nature of the information that XO has disclosed, I grant XO's motion to keep the specific amounts paid to its vendors under seal. However, XO shall modify its report to list the total dollars paid in 2002 and shall disclose this aggregate amount. XO shall file and serve its modified report as set forth below.

IT IS RULED that:

1. The motions for protective orders of the utilities listed in Sections 2A-N of this ruling are granted as more fully set forth below.
2. The information ruled as appropriate to remain under seal in Sections 2A-N of this ruling shall remain under seal for a period of two years from the date of this ruling, and during that period shall not be made accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

3. If any of the utilities set forth in Sections 2A-N of this ruling believe that further protection of this information is needed after two years, they may file a motion stating the justification for further withholding the material from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than 30 days before the expiration of this protective order.

4. The following utilities shall file and serve their modified redacted reports no later than July 31, 2003: Allegiance Telecom of California; AT&T Communications of California; AT&T Wireless Services of California, LLC; Comcast Phone of California; Cingular Wireless; Pacific Bell Telephone Company (SBC California); SBC Advanced Solutions, Inc.; Southern California Edison Company; Southwest Gas Corporation; Verizon California, Inc.; WorldCom, Inc.; and XO California, Inc.

Dated July 14, 2003, at San Francisco, California.

/s/ JANET A. ECONOME

Janet A. Econome
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Motions for Protective Orders on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated July 14, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.